N. 2886

Nos. 14208-14218

In the
United States Court of Appeals
For the Ninth Circuit

WARREN E. TALCOTT, JR.,
Appellant,

vs.

COMMANDING OFFICER, et al.,
Appellees.

Appellant's Closing Brief

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Appellant's Closing Brief

Appellee's Brief deals with the subject matter involved in an order different than that in Appellant's Opening Brief and in three points instead of appellant's four.

This Closing Brief will use the Opening Brief's four headings and will try to deal with each of the arguments of appellee, indicating where they were made.

I.

A CLASSIFICATION BY A LOCAL BOARD IS INVALID WHEN NO CONSIDERATION HAS BEEN GIVEN TO THE EVIDENCE IN A REGISTRANT'S SELECTIVE SERVICE FILE.

Appellee's first attack on this point is that it is immaterial whether or not the board members consid-

ered the file on the theory that where a basis of fact exists in the file a denial of due process is immaterial. This is pre-Estep,* reasoning; today it is accepted that a denial of due process invalidates a classification even if a basis of fact should be present. See *United States v. Romano,* 103 F. Supp. 597, 601.

It is submitted that a registrant may always show a prejudicial illegality in his "classifying." Appellee's fears that if appellant is permitted to attack a classification by evidence that "the board members did not actually consider the file, there would never be an end to litigation in Selective Service cases" [Br. p. 19] are without any practical foundation. Never before, in reported selective service history has a registrant become armed, as this appellant has, with "confession" testimony on this point. See Appendix A. And whenever another registrant has such evidence available a trial court should welcome it.

This court itself has several times summed up appellant's point on the necessity of "consideration" and that the lack of it is fatal. In *Knox v. United States,* 200 F. 2d 398:

> "Classification by the Local Board is an indispensable step in the process of induction. The registrant is entitled to have his claims considered and acted upon by these local bodies the membership of which is composed of residents of his own community." [402]

Estep v. United States, 66 S. Ct. 423.

The same comment was made by Judge Stephens in one of the cases cited by appellee, *Sisquoc Ranch Co. v. Roth,* 153 F. 2d 437, at 440.

Appellee's next attack on this point is that "Appellant would not have sustained his offer of proof, as appellee was in possession of evidence to the contrary . . . " [Br. p. 19]. Appellant appends hereto, as Appendix A, an affidavit of counsel on this subject. It is to be observed that Appellant's proffer was based on a written statement on hand from the board members.

Contrary to appellee's assumption appellant's attempt to introduce this evidence was not for the purpose of showing the state of mind of the board members or their sympathies *but to show the facts concerning the classifying.* The point made by Judge Carter in *United States v. Alvies,* 112 F. Supp. 618 is applicable:

> "Where the record of selection service board action in classifying a registrant is questionable, presumptions are resolved in favor of the registrant. See *U. S. ex rel Reel v. Badt,* 2 Cir., 141 F. 2d 845[9]; *U. S. ex rel. Levy v. Cain,* 2 Cir. 149 F. 2d 338;[10] *United States v. Balogh,* 2 Cir., 157 F. 2d 939[11]; *United States v. Everngam, supra.*[12]" [624]

Appellee's final attack on this point is that the word "determination" in subsection (a) of Section 1626.2 does not refer to the same act as the word "classification" which occurs in the sentence 17 words previously.

With respect to whether or not a registrant may appeal from a IV-F classification the parties concede that subsection (a) of section 1626.2 applies but interpret it oppositely. Appellant believes that his interpretation, that no appeal is permitted, is the correct one because the single sentence regulation contains the word "except", which indicates that the subsequent clause describes an exception to the phrase "any classification". The regulation, with this word underlined, emphasizes the definite intent not to permit selective service appellate bodies to pass on conflicting medical and psychiatric testimony:

> "(a) The registrant, any person who claims to be a dependent of the registrant, any person who prior to the classification appealed from filed a written request for the current occupational deferment of the registrant, or the government appeal agent may appeal to an appeal board from any classification of a registrant by the local board *except* that no such person may appeal from the determination of the registrant's physical or mental condition."

Appellee's attempt to separate the single sentence into two opposed and unrelated ideas is contrary to grammar, statutory draftsmanship, judicial interpretation and good sense. The regulations permit appeals *only* from *classifications.* The sole, permissible interpretation of the subsection (a) quoted is that appeals from IV-F classifications are not permitted.

Olinger v. Partridge, 106 F 2 986, cited by appellee to support the argument of waiver by reason of failure

to appeal is readily distinguishable because Olinger, after he received the appealable I-A classification did not appeal "and made no effort to appear to discuss his classification or to present new information to the draft board." [987] Talcott diligently did all these very things, after he received his I-A classification notice.

II.

THE IV-F CLASSIFICATION WAS ARBITRARY AND CONTRARY TO THE EVIDENCE THEN, OR AT ANY TIME, BEFORE THE BOARD. FOR THIS ADDITIONAL REASON IT CANNOT BE A BASIS FOR AN EXTENSION OF LIABILITY AND FOR A I-A CLASSIFICATION THAT IS MADE AFTER THE REGISTRANT PASSES HIS 26th BIRTH DATE.

To support the argument that a basis in fact existed for the IV-F classification appellee states:

> "Under State Director's Advice No. 55, issued by General Hershey, local boards were authorized to place in classification 4-F any registrant who had theretofore been rejected for service by the Armed Forces." [Br. p. 18]

Just what is "State Director's Advice No. 55"? It isn't a regulation, proclamation on anything to be found in the Federal Register. It is really only an interdepartmental communication and should never be used against a selective service registrant in a court

proceeding. This type of "office" law-making was struck down in *Ex Parte Barrial,* 101 F. Supp. 348. This type of office law-making is too frequently indulged in by both the Director and the various State Directors and the local boards are often led astray in adopting policies contrary to the Act and/or the regulations.

This practice was also criticized in *Ex parte Ghosh,* 50 F. Supp. 851:

> "The letter refers to a 'mimeographed statement' of October 23, 1943. This statement was in evidence. It is unsigned and bears no caption or designation either as a 'directive', 'order', 'memorandum to the local board', or any of the various other appellations given to the almost innumerable types of communications to local boards from state or national headquarters. It certainly was not a rule or regulation promulgated by the President or his delegee, the National Director of Selective Service. And the State Director is not empowered under the Act to promulgate rules or regulations nor to substitute his judgment for that of the local or appeal boards." [857]

Appellee, on page 25, bases still another argument on "Operations Bulletin No. 57." These advices, bulletins, and many others called "S.H.Q's", "Selective Service News" etc. are not available to registrants. Counsel has tried to have his name placed on the mailing list for them [they cannot be purchased from the Superintendent of Documents] but has repeatedly been

refused. Secret, interdepartmental communications should not be cited against a registrant.

Appellant knows of no cases on IV-F arbitrariness. The nearest judicial comment on it is in a 1952 decision that has come to counsel's attention while this Closing Brief was being written. Judge Wm. F. Riley anticipated Dickinson (as many others did) in *United States v. Brandt,* Cr. No. 1-227, S. D. Iowa, June 2, 1952:

> "Now as to anyone claiming to be a minister of religion, there is not any doubt in my mind that the duty devolves upon the draft board of deciding whether one claiming exemption on that ground is in reality a minister, just as they have the right to determine whether he falls into any other category—if 4-F they learn that through physical examination; if he is entitled to 4-E they learn that by testing the good faith of his claim to be exempt on account of his religious training and belief; and I don't believe that I have any right—in fact, I consider I have no right to review the action of the board with respect to the classification of ministers so long as there is any reasonable basis for the action of the board and so long as defendant is accorded a hearing." (Underscoring supplied.)

Copies of this decision will be handed to the Court during oral argument.

Judge Riley put his finger on the difference between fact and speculation. Appellee speculates that the notation in the file of the once-thought-to-be-punc-

tured eardrum is a basis in fact. Judge Riley and Talcott agree that a physical examination should have been made in 1950.

Appellant submits that there was no basis in fact for a IV-F classification until the physical examination was given him *in 1952.* It is to be remembered that, after he stated in the questionnaire (Ex. p. 10) "I feel that the condition of my eardrum should be clearly established," the board took no steps to do this and appellee's argument, that State Director's Advice No. 55J relieved the board from the necessity of discovering the fact of the case is met by *Dickinson's* requirement that the classification be based upon fact, not speculation concerning the "punctured" eardrum. This is so because, as everyone knows holes come in different sizes and a puncture sufficient to disqualify a naval officer candidate may be insufficient to disqualify a selective service selectee.

III.

THE LOCAL BOARD FRUSTRATED PETITIONER FROM SECURING AN IMPORTANT PROCEDURAL RIGHT, NAMELY, A PERSONAL APPEARANCE BEFORE THE LOCAL BOARD (WITH THE COROLLARY RIGHT TO AN APPEAL THEREAFTER SHOULD THE DECISION BE ADVERSE) ALTHOUGH HE HAD MADE A TIMELY, WRITTEN REQUEST. THIS WAS A DENIAL OF DUE PROCESS.

The parties are agreed that this point turns on the interpretation of the October 14, 1952 letter of appellant to the local board [Ex. pp. 25-28].

Subsequent to the printing of the Opening Brief appellant was apprised of a very recent decision interpreting a request similar to this appellant's:

In The United States District Court
For the Eastern District of Pennsylvania

UNITED STATES OF AMERICA,)
v.) Criminal
WILMER KRATZ DERSTINE.) No. 16715

OPINION

GRIM, J. March 30, 1954

After having waived a jury trial defendant was found guilty of refusing to submit to induction into the armed forces of the United States. He reported for induction as ordered, but upon completion of the processing at the induction station he refused to be inducted. He has filed a motion for judgment of acquittal averring, among other things, that he was not accorded the personal

hearing before his local Selective Service Board, to which he was entitled under the Selective Service Regulations.

The problem in the case was whether or not the defendant, a Mennonite, was entitled to a conscientious objector classification[1], which, if it had been granted, would have prevented his induction.

After the case had gone through all the Selective Service channels from the Local Board to the office of the National Director of Selective Service[2] with decisions always against the defendant registrant[3], the National Director made a written request to the Local Board that the classification be reopened and considered anew. See 32 C. F. R. 1625.3.

Following the request of the National Director the Local Board on September 13, 1951, reopened the classification and considered it anew but again refused the registrant a conscientious objector classification and put him again in 1-A. On September 14, 1951, defendant wrote a letter to the Local Board, which among other things, stated:

> "Today I received a new classification card 1-A from you as local Draft Board. . . . I do at this time want to present some new evidence and request either a hearing before the local board or *appeal* again to the Board

[1]When the proceedings started IV-E was the conscientious objector classification. The regulations were changed during the course of the proceedings so that now I-O is the conscientious objector classification.

[2]There was no appeal to the President, the registrant having been deprived of this right because the decision of the appeal board against the defendant's contention was unanimous. 32 C. F. R. 1627.3.

[3]The Hearing Examiner and the Department of Justice recommended that defendant be given a conscientious objector classification, but their recommendations were not followed by the selective service officials.

> of Appeals. . . . Upon this new evidence which I am submitting above, I hereby appeal to the Board of Appeals for a 4-E classification."

This letter was treated by the Local Board solely as an appeal to the Appeal Board and the case was referred to the Appeal Board. The request for a hearing was overlooked or ignored. The Appeal Board rejected the second appeal and again unanimously continued defendant in 1-A. The National Director of Selective Service upon application of the defendant again intervened and requested that defendant's selective service file be sent to him for further review. The file was sent to the National Director who after further consideration wrote to the State Director stating that he did not contemplate any further action in the case and directed that the processing of the defendant should proceed.

It is well established that the failure of a local draft board to accord a registrant a procedural right provided in the Selective Service Regulations invalidates the Board's action. *United States ex rel Berman v. Craig,* 207 F. 2d 888 (3rd Cir. 1953). *United States v. Stiles,* 169 F. 2d 455 (3rd Cir. 1948).

The Selective Service Regulations provide: (32 C. F. R. 1624.1)

> "*Opportunity to appear in person*: (a) Every registrant, after his classification is determined by the local board (except a classification which is itself determined upon an appearance before the local board under the provisions of this part), shall have an oppor-

> tunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (SSS Form No. 110) to him. . . . "

This regulation clearly gave defendant an opportunity, if he requested it in writing, to appear in person before his Local Board after he was given a 1-A classification on September 13, 1951. The fact that he had had a personal appearance before the Local Board on January 11, 1951, did not take away this right, since the regulations provide: (32 C. F. R. 1625.13)

> "*Right of appeal following reopening of classification.* Each such classification shall be followed by the same right of appearance as in the case of an original classification."

Defendant's request was not as clear as it might have been. He requested a "hearing" rather than an "opportunity to appear in person", but no one would seriously contend that a request for a hearing was not a request for an "opportunity to appear in person". A more serious defect in the request was that it did not definitely ask for a personal hearing, but instead it asked in the alternative either for a personal appearance or an appeal to the Appeal Board. Defendant said:

> "I do at this time want to present some new evidence and request either a hearing before the local board or *appeal* again to the Board of Appeals."

By using these words defendant in a sense left it to the judgment of the Local Board as to whether he should be given a personal appearance or whether his letter should be considered as an appeal to the Appeal Board. This apparently is the meaning which the Local Board took from his letter since it immediately referred the problem to the Appeal Board instead of giving defendant a hearing. *But defendant's request also had another meaning,* namely, that he requested an opportunity to appear in person before the Local Board, but if he had no such right or if after his appearance the decision should be against him, then he wanted to take an appeal to the Appeal Board. The second meaning of defendant's words is just as reasonable as is the meaning which the Local Board took from defendant's letter.

Registrants are "not to be treated as though they were engaged in formal litigation assisted by counsel." *United States ex rel Berman v. Craig, supra* at 891. Whenever a registrant in writing makes a request to a Local Board, no matter how ambiguously or unclearly the request is stated, if it indicates in any way a desire for a procedural right, the writing should be construed in favor of the registrant and the procedural right granted, or the registrant shoud be contacted by the Board to obtain clarification of what he had in mind when he made the request. The Local Board did not consider defendant's letter in this manner. It construed it as though defendant waived his right to have a personal appearance before the Board, and as meaning that defendant gave the Board the

choice of determining whether or not defendant should be given a personal appearance.[4]

There is no evidence that defendant followed up his request for a personal appearance by appearing uninvited at a local board meeting for the purpose of a personal appearance before it. In my opinion, he was not required to do this under the regulations. As a result of defendant's letter, the Local Board either should have asked defendant exactly what he wanted or it should have notified defendant that his request for a hearing before it had been granted, and it also should have told him when the Board would hold a meeting at which he could appear.

It is clear that the Local Board erred in not giving defendant a right to a personal appearance as a result of the request in his letter to it. This presents the question as to whether the error of the Local Board can be considered a harmless one which, under *Martin v. United States,* 190 F. 2d

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[4]The letter was worded very cleverly. It led this experienced and able Local Board into an error which is now being used as an argument to invalidate the selective service proceedings. Perhaps, if the request had not been in the alternative, and had been a clear request for a hearing, the Board would have followed the regulations and granted defendant a personal appearance, or at least it might have specifically denied defendant's request in such a way that th Appeal Board would have discovered the error and corrected it by ordering the Local Board to give defendant a personal hearing. But as the trier of the facts in this case I cannot say that the request was intentionally worded in the alternative with the hope that it would mislead the Local Board.

From the time the conscientious objector form (SSS 150) was applied for defendant was advised by Bishop John Lapp of the Mennonite Church. Bishop Lapp was an experienced, intelligent and resourceful advisor in this type of problem. Not only did he help defendant to fill out forms and write letters, but he also went with him to Washington to help him to state his case before the National Director of Selective Service. It is interesting to notice that under the regulations legal counsel may not appear with a registrant in his personal appearance before a Local Board, 32 C. F. R. 1624.1(b), but with the Board's permission advisers who are not lawyers may appear with registrants at the time of their personal appearance. It should be noted also that when defendant appealed to the Appeal Board he had a right to point out to the Appeal Board that his right to a personal appearance had been denied to him, 32 C. F. R. 1626.12. He did not do this.

775, did not invalidate the induction.[5] This is a serious problem in the case. The case was thoroughly contested as it went through the Local Board, the Appeal Board, the office of the State Director of Selective Service and the office of the National Director, and it is unlikely that anything would have been presented at a second personal appearance that had not already been presented with full emphasis on the important things to be considered. Consequently, it is unlikely that the error of the Local Board had any effect on the result of the case.

The right to appear personally before a local board is treated very seriously by the regulations. When a registrant makes a personal appearance before a local board, the Board must see that whatever new information it receives is summarized in writing and placed in the registrant's file. 32 C. F. R. 1624.2(b). If the registrant does not appear when he has been given an opportunity to do so this fact must be entered into the minutes of the Local Board. 32 C. F. R. 1624.2(a). After the registrant has made a personal appearance the Local Board must consider the classification problem anew and send to the registrant a written notice of the result of its new consideration of the case. 32 C.F.R. 1624.2(d). When a registrant is given a personal appearance this extends his time for an appeal so that the appeal time does not begin

[5]In the *Martin* case the registrant after a personal appearance before the Local Board was not given the written notice of the Board's refusal to change his classification to which he was entitled under the regulations. But the Board at the end of the hearing orally notified the registrant that it would not change his classification, and based on this oral notice the registrant filed an appeal within the proper time. It was clear that the fact that the registrant received oral rather than written notice of the Board's action in no way affected the result in the case.

to run until the time when the Local Board makes a decision in reference to the reclassification problem created by the personal appearance. 32 C. F. R. 1624.2(e). If a registrant does not speak English adequately he may bring an interpreter with him at the time of his personal appearance. 32 C. F. R. 1624.1(b).

It is important that a registrant be given an opportunity to appear in person before a Local Board. A pleader can almost always make a more effective presentation in the give and take of an argument in person than he can in writing. Many fine young men cannot express themselves well in writing, but they can do much better when they speak and are not so much concerned with their method of expression. It is particularly important that conscientious objector claimants be given an opportunity to appear in person. Their thoughts expressed in writing are often stereotyped and so subtle that they are very difficult to understand. Whether or not a registrant is truly a conscientious objector is pretty much a question of his sincerity, and sincerity, being a subjective problem, can be judged by a personal appearance better than it can by a written statement.

The defendant suggests a reason why in this case particularly he should have been given a right to a personal appearance when he requested it. The Federal Bureau of Investigation made an investigation in this case. The Hearing Examiner was given the F.B.I. report and summarized its contents in his report. The information in the F.B.I. report came from acquaintances and neighbors of defendant. Defendant was not given the

right to examine the F.B.I. report. Because of the summary of the F.B.I. report in the Hearing Examiner's report defendant knows substantially what was in it. He admits that most of it is correct, but he now denies some of it, and much of it is damaging to him. He contends that if he had been given a personal appearance before the Local Board he not only would have given it new information (which is unlikely) but also he would have denied some of the damaging information in the F.B.I. report.[6, 7]

The failure to grant defendant an opportunity to appear personally before the Local Board was a substantial error which invalidated the induction. He was denied a substantial procedural right to which he was entitled under the regulations. *United States v. Fry,* 203 F. 2d 638; *United States v. Stile,* 169 F. 2d 455. *United States ex rel Berman v. Craig, supra.*[8]

ORDER

AND NOW, March 30, 1954, in accordance with the foregoing opinion, defendant's motion for judgment of acquittal is hereby granted.

/s/ Allan K. Grim
J.

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[6]The F. B. I. report, among other things, included information to the effect that defendant belonged to a group of "hot-rodders" known as "Franconia cowboys", who lassoed mail boxes while they drove swiftly on public highways. Defendant contends that he would have denied this.

[7]The Hearing Examiner's report was thoughtful and thorough. In order to state the case properly the Examiner reviewed and summarized the information in the F. B. I. report. Although the Examiner's conclusion and recommendation were in defendant's favor, ironically his frank statement of the facts may have caused defendant considerable harm when the case was considered by the Appeal Board. The Hearing Examiner was Judge Curtis Bok of the Court of Common Pleas of Philadelphia.

[8]In this case the Court of Appeals for the Third Circuit decided, among other things, that an induction is invalid if a Local Board sends out an order to report for induction before ten days after a reclassification, because a registrant under the regulations is given ten days after a reclassification to request a personal appearance before the Local Board.

IV.

THE LOCAL BOARD FAILED TO REOPEN APPELLANT'S CLASSIFICATION, AND CLASSIFY HIM ANEW, WHEN HE PRESENTED THE STANDARD EVIDENCE SHOWING THAT HE WAS A FATHER, AND THEREFORE MANDATORILY ENTITLED TO A III-A CLASSIFICATION. THIS WAS A DENIAL OF DUE PROCESS.

Appellant argued that "The regulation setting a deadline is an alteration of the legislative intent. It defeats the intent of Congress." (Op. Br. pp. 32, at 36.)

Appellee's argument on the captioned point (Br. pp. 24-33) does not meet appellant's above-quoted argument directly. Appellant's choices of phraseology are singled out for scrutiny (Br. p. 24-); use is again made of a secret, interdepartmental bulletin (Br. p. 25) and cases appellant cited are "distinguished". The cases only require comment.

Appellee erroneously seeks to make a distinction between "deferments" and "exemptions" in rating the applicability of the cases cited by appellant. This error was doubtless induced by the fact that many decisions use the words interchangeably and particularly by the misuse of the word "exemption" in the *Clark* opinion.[1]. During the entire processing period of Clark [his refusal to submit to induction occurred on March 22, 1951] the conscientious objector classification sought (IV-E) was correctly termed a deferment. The Director of Selective Service says so. The following

[1]*United States v. Clark*, 105 F. Supp. 612.

is from Local Board Memorandum No. 38[2], issued October 30, 1951, signed "Lewis B. Hershey, Director.":

> *2. Liability Not Extended by Deferments Not Now Authorized by Law.*—Prior to June 19, 1951, section 6 required the deferment of conscientious objectors who were opposed to both combatant and non-combatant service in the armed forces and authorized the deferment of registrants who had wives with whom they maintained a bona fide family relationship in their homes. Section 6 was amended on June 19, 1951, by eliminating the provision requiring the deferment of conscientious objectors and by withdrawing from the President authority to provide for the deferment of registrants with wives alone, except in cases of extreme hardship. These two deferments, therefore, were not authorized by the law on and after June 19, 1951. Since the provisions of section 6 (h) extending liability to age thirty-five relate only to those "who are or may be deferred" under the provisions of section 6 on or after June 19, 1951, the deferments which would result in such extension of liability are only those which were authorized by law on June 19, 1951. Registrants who on or after June 19, 1951, were deferred in Class IV-E, or in Class III-A solely because of having wives with whom they maintained a bona fide family relationship in their homes (no hardship or other elements of dependency being involved), therefore, did not have their liability extended to age thirty-five.

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[2]The Superintendent of Documents furnishes Local Board Memoranda with a subscription to the Selective Service Regulations. He cannot take subscription for "Operation Bulletins" or any of the inter-departmental documents mentioned in the brief.

It is therefore evident that the reasoning in the *Clark* case should be considered applicable to appellant's argument on Point IV.

It should be noted that it is still another misconception to consider all deferments "discretionary" (Br. p. 32). As we pointed out (Op. Br. p. 32) the father's III-A deferred classification is mandatory, given the standard evidence. More "discretion" is involved in the determination of exemptions such as for "regular" minister, or for the I-O type conscientious objector than for the determination of deferments such as father's.

Appellee's argument on the other cases cited in Appellant's Opening Brief is that they involve different types of classifications and are therefore not applicable. Appellant stands by the particular use he has made of each and adds another:

> "In the light of the Supreme Court's decisions and the decision of the United States Court of Appeals for the Ninth Circuit in the case of *Schuman v. United States,* 208 F 2 801, even though these are cases involving ministers, I think the same spirit of decision is applicable here." (Underscoring supplied.)
>
> *United States v. Titsuo Izumihara,* 120 F. Supp. 36, 40.

A writ should issue for the four reasons stated.

Respectfully,

J. B. TIETZ

Appendix

APPENDIX A

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
County of Los Angeles.—ss.

J. B. Tietz being first duly sworn states:

He was counsel for Warren E. Talcott, Jr. during all litigation involved in this matter;

That on October 13th and October 19, 1953 he had telephone conversations with Local Board Chairman Roger S. Marshall and Mr. Marshall said:

> "We didn't give individual attention to files in 1949; there was no pressure on us for men; no, we didn't see Talcott's file on or before January 23, 1950 nor did we have any facts before us on that date. When the board came into it we initialed it. This one we didn't initial because we didn't see the file."
>
> "I would like to read a statement in court that gives an explanation of our action. Mr. Hickson who is an attorney and has been on the board many years prepared it."

Affiant informed Mr. Marshall he desired a copy of the statement; that it might be acceptable as a stipulation.

That he received through the mail, the following letter:

October 21, 1953
RE: Warren Edward Talcott, Jr.
4 95 25 647

The undersigned members of LDB 95 have reviewed the file of Warren Edward Talcott Jr., and make the following statement of procedure at the time of his classification.

When this registrant was classified on January 23, 1950, no men were being inducted. Registrants were being classified as a clerical procedure where any grounds for a deferred classification was evident in the file. That is to say, that men, who had discharged military service, or were married, or claimed a physical defect, even if it were not verified by a doctor's letter, were placed in the respective classifications and the board initialed the minutes of these meetings without review of the files. This was true even of deferred classifications. Potential 1-A classifications were kept in a pool for board review.

The file reflects that at the time Talcott was classified, the SSS Form 112 shows that only automatic classifications were reported, therefore the board would not have reviewed these questionnaires personally, and no initials indicating such action is on the questionnaire when this classification was made. When the law, extending the liability of men was passed, Local Boards were instructed not to classify men into Class V-A who had passed their 26th birth date until an auditor from Southern Area would review and initial the files for extension. Talcott's file was reviewed and it is presumed that the notation in series XV

was not properly evaluated and the man was retained in IV-F and his liability extended as the cover sheet shows, by the initialing of the auditor.

Subsequent IV-F review ordered by National Headquarters, necessitated sending all men in that classification for physicals. This was done and he was found acceptable. Here the Local Board reclassified into 1-A, as his liability had been extended by the auditor. The 4-F review showed him physically acceptable for service, therefore he qualified for no other classification. His appeal of that classification was received and at that time the Local Board was of the opinion that he registered originally as a well man, and so stated in his file. However, at no place was there opportunity for re-classification at Local Board level without permission from State Headquarters. This permission was requested, and was denied, and Talcott was finally inducted in August 1953.

ROGER S. MARSHALL
MARSHALL HULSON

Sworn to before me and subscribed in my presence this 28 day of May, 1954 by J. B. Tietz, personally known to me.

s/ Edward Raiden
EDWARD RAIDEN
Notary Public.